## **United States Department of Labor Employees' Compensation Appeals Board**

W.M., Appellant	)
and	) Docket No. 17-1667 ) Issued: March 8, 2018
U.S. POSTAL SERVICE, POST OFFICE, California, PA, Employer	)
Appearances: Alan J. Shapiro, Esq. for appellant <sup>1</sup> Office of Solicitor, for the Director	Case Submitted on the Record

## ORDER REMANDING CASE

## Before:

CHRISTOPHER J. GODFREY, Chief Judge PATRICIA H. FITZGERALD, Deputy Chief Judge ALEC J. KOROMILAS, Alternate Judge

On July 28, 2017 appellant, through counsel, filed a timely appeal from a June 16, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP) which affirmed the termination of appellant's wage-loss compensation effective October 4, 2016. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

The Board, having duly considered the matter, concludes that the case is not in posture for decision. The electronic integrated Federal Employees' Compensation System (iFECS) case record contains a June 30, 2016 physical evidence receipt for three discs of surveillance videos obtained by the employing establishment's Office of Inspector General (OIG). The surveillance videos reportedly showed appellant performing unreported private sector work as a janitor, tasks which purportedly exceeded his medical restrictions. In a July 15, 2016 letter, OWCP instructed Dr. Victoria Langa, a Board-certified orthopedic surgeon and second opinion physician, to review the surveillance video and reference it in answering questions posed by OWCP. Also, the July 15, 2016 statement of accepted facts (SOAF) provided to Dr. Langa extensively referenced

<sup>&</sup>lt;sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.; see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

the activities shown on the surveillance video. Dr. Langa submitted an August 5, 2016 report based, in part, on a review of the case record, which included the three surveillance video discs. OWCP terminated appellant's wage-loss compensation benefits, effective October 4, 2016, based on Dr. Langa's August 5, 2016 opinion as the weight of the medical evidence. In the June 16, 2017 decision, an OWCP hearing representative affirmed the October 4, 2016 decision. The three surveillance video discs, however, are not included in the case record transmitted to the Board.

Section 501.2(c) of the Board's *Rules of Procedure*,<sup>2</sup> provides that the Board has jurisdiction "to consider and decide appeals from final decisions of OWCP in any case arising under the [Federal Employees' Compensation] Act."<sup>3</sup> Additionally, the Board's review of the case is limited to the evidence which was before OWCP at the issuance of the final decision.<sup>4</sup> Since the record as transmitted to the Board does not contain evidence that OWCP relied upon in reaching its final decision, the Board is unable to properly "consider and decide" appellant's claim. The June 16, 2017 decision of OWCP, therefore, must be set aside. The case is remanded to OWCP for reconstruction and proper assemblage of the case record including obtaining the three above-referenced surveillance video discs. Following this and such further development as OWCP deems necessary, OWCP shall issue a *de novo* decision. Accordingly,

**IT IS HEREBY ORDERED THAT** the June 16, 2017 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this order of the Board.

<sup>&</sup>lt;sup>2</sup> 20 C.F.R. § 501.2(c).

<sup>&</sup>lt;sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>&</sup>lt;sup>4</sup> See 20 C.F.R. § 501.2(c)(1).

Issued: March 8, 2018 Washington, DC

> Christopher J. Godfrey, Chief Judge Employees' Compensation Appeals Board

> Patricia H. Fitzgerald, Deputy Chief Judge Employees' Compensation Appeals Board

> Alec J. Koromilas, Alternate Judge Employees' Compensation Appeals Board